IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

OP.No. 442 of 2002(C)

PETITIONER:

COCHIN LABOUR UNION,REPRESENTED BY ITS
JOINT SECRETARY,KRISHNASWAMY ROAD,KOCHI-682 035

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW

RESPONDENTS:

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1. STATE OF KERALA,REPRESENTED BY THE
SECRETARY TO GOVERNMENT,GOVERNMENT OF KERALA,
LABOUR AND REHABILITATION DEPARTMENT,GOVT.
SECRETARIAT,THIRUVANANTHAPURAM

2. THE PHARMACEUTICAL CORPORATION (IM)
KERALA LTD.,REPRESENTED BY ITS MANAGING DIRECTOR,
THRISSUR - 680 001

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SRI.V.KRISHNA MENON

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.442/02.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY O CHARTER OF DEMAND DATED 11.1.99 SUBMITTED BY PETITIONER TO DISTRICT LABOUR OFFICER, THRISSUR.

EXT.P2: TRUE COPY OF COMPLAINT DATED 21.7.1999 SUBMITTED BY PETITIONER TO DISTRICT LABOUR OFFICER, THRISSUR.

EXT.P3: TRUE COPY OF THE LETTER NO.25331/A3/2000/LBR DATED 22.10.2001 SENT BY 1ST RESPONDENT TO PETITIONER.

/TRUE COPY/

PA TO JUDGE.

S.SIRI JAGAN,J.

O.P.NO.442 OF 2002

JUDGMENT

12.03.2007

S. SIRI JAGAN, J.

O.P.NO. 442 OF 2002

DATED THIS THE 12th DAY OF MARCH, 2007

JUDGMENT

A Union of workers of the 2nd respondent Company has approached this Court challenging Ext.P3 order of the Government of Kerala whereby an industrial dispute raised by the petitioner in respect of their demand for regularisation of 27 employees in service was refused to be referred for adjudication. The workers in question were appointed temporarily for a period of 179 days. They raised a claim for regularisation of their service. The Government noticed that this Court in O.P.No.20042/98 issued a general direction to the Government to terminate the service of all temporary employees not only in the Government Service but also in the services of Public Sector undertakings, autonomous bodies and local bodies, Universities etc. The Government further relied on the fact that Pharmaceutical Corporation (IM) Kerala Ltd is one of the Companies included in the Kerala Public Service Commission (Consultation by Corporations and Companies) Rules 1971, as per which the appointments to the 2nd respondent is to be made through the Public Service Commission.

2. Learned counsel for the petitioner would argue that it is

settled law that the Government while considering as to whether an industrial dispute has to be referred for adjudication or not cannot go into merits of the case. The counsel also points out that in W.P.(C)No.23352/06 filed by the employees whose cause is espoused by the petitioner union had been considered by the Hon'ble High court in W.P.(c) No.23352/06. In that case, in the counter affidavit filed by the management , they had admitted that one set of employees similarly situated have already approached the Industrial Court and dispute is pending adjudication. In view of this original petition is pending, the court had disposed of that writ petition leaving it open to the petitioner to pursue this original petition. The petitioner would contend that in such circumstances Ext.P3 is discriminatory and liable to be set aside.

3. Learned counsel for the 2nd respondent as also the learned Government pleader would stoutly oppose the contentions of the petitioner. According to them the workers in question have no right to be regularised as they have been appointed for specific period of 179 days and further they would contend that they were only a worker trainees and not temporary as claimed by the petitioner Union. However the counsel for the 2nd respondent frankly admits that the posts of workers do not come within the purview of the Public Service Commission.

4. I need not go into all these issues in this original

petition, in so far as W.P.(C)NO.23352/06 the 2nd respondent themselves have in their counter affidavit stated that one set of similarly situated employees have already got an identical dispute referred for adjudication, which is pending adjudication. When the Government has referred an identical dispute for adjudication, the refusal on the part of the Government to refer the case of the workers whose cause was espoused by the petitioner Union alone, would amount to discrimination and violation of Articles 14 and 16 of the Constitution of India. In the above circumstances, I am satisfied that Ext.P3 is therefore liable to be quashed. I do so and direct the 1st respondent Government to refer the industrial dispute raised by the petitioner Union for adjudication as contemplated under Section 10 of the Industrial Disputes Act. Orders in this regard shall be passed within one month from the date of receipt of a copy of this judgment.

Original petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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